

MICHAEL E. ROBERTS
(PLAINTIFF PRO-SE)

David J. Bradley, Clerk of Court

V.

> CIVIL ACTION No. H-14-0903
JURY

THE CITY OF HOUSTON et al.

>

PLAINTIFF OPPOSITION TO DEFENDANT'S "MOTION FOR SUMMARY JUDGMENT."

COMES NOW BEFORE THIS HONORABLE COURT PLAINTIFF PRO-SE, MICHAEL E. ROBERTS, AND PRESENTS HIS OPPOSITION TO DEFENDANT'S MOTION FOR SUMMARY JUDGMENT; AND WILL SHOW JUST CAUSE WHY SUMMARY JUDGMENT SHOULD BE DENIED:

UNDISPUTED MATERIAL FACTS

INCLUDED WITHIN PLAINTIFF'S OPPOSITION TO SUMMARY JUDGMENT HE OFFERS HIS "DECLARATION OF UNDISPUTED FACTS IN SUPPORT," PAGES ONE THRU FOUR. THESE MATERIAL FACTS ALONG WITH PLAINTIFF'S VERIFIED COMPLAINT BASED ON PLAINTIFFS' PERSONAL KNOWLEDGE WILL SHOW:

- 1) THE EXISTENCE OF A SUBSTANTIAL RISK OF SERIOUS HARM,
- 2) THE DEFENDANTS ACTUAL KNOWLEDGE OF THIS RISK,
- 3) THEIR FAILURE TO RESPOND REASONABLY, AND
- 4) CAUSATION BETWEEN THE DEFENDANT'S DELIBERATE INDIFFERENCE AND THE INJURY THE PLAINTIFF SUFFERED.

IN PROVING THE ABOVE BY THE PREPONDERANCE OF EVIDENCE, MOST OF WHICH IS CONTAINED WITHIN THE INTERNAL AFFAIRS INVESTIGATIVE REPORT ITSELF; THE DEFENDANTS WILL BE UNABLE TO SUPPORT A DEFENSE OF QUALIFIED IMMUNITY.

HERNANDEZ V. VELASQUEZ 522 F.3d. 556, 561 (5TH CIR. 2008)

JONES V. BLANAS 393 F.3d. 918, 923 (9TH CIR. 2004)

PLAINTIFF'S SWORN DECLARATION OF THE FACTS CONTAINED HEREIN

I MICHAEL E. ROBERTS BEING COMPETENT TO TESTIFY AND HAVING PERSONAL KNOWLEDGE OF THE EVENTS AND ACTIONS OF THE OFFICERS TO WHOM I CAME IN CONTACT WITH, WITH WHOM I DESCRIBE BY NAME HEREIN; SWEAR UNDER PENALTY OF LAW TO BE TRUE AND CORRECT TO THE BEST OF MY KNOWLEDGE.

Michael Roberts
(PLAINTIFF)

SUMMARY OF CASE

PLAINTIFF BRINGS THIS ACTION AS A RESULT OF OFFICER C.M. FERDINAND REAR-ENDING PLAINTIFF'S CAR WHILE ON THE FREEWAY AND IGNORING THE ACCIDENT. FABRICATING THE EVENTS AS THEY TRULY OCCURED TO HER SUPERVISORS, WHEREBY DEPRIVING PLAINTIFF OF HIS LIBERTY - A 5TH ~~AMENDMENT~~ AMENDMENT RIGHT. THE PLAINTIFF THEREBY SUBJECTED TO A VIOLATION OF HIS 4TH AMEND. AGAINST UNLAWFULL SEARCH AND SEIZURE AS A RESULT OF A INVALID SEARCH WARRANT. VIOLATION OF HIS 8TH (EIGHTH) AMEND. RIGHT AGAINST CRUEL AND UNUSUAL PUNISHMENT IN WHICH THE SEARCH WARRANT WAS ~~EXECUTED~~ EXECUTED, AND A VIOLATION OF HIS 14TH AMEND. RIGHT TO DUE PROCESS AND DELIBERATE INDIFFERENCE TO A SERIOUS MEDICAL NEED AND FAILURE TO PROVIDE A PROPER RESPONSE TO THAT NEED.

EVIDENCE IN SUPPORT

PLAINTIFF PRESENTS EXHIBIT I - A PORTION OF THE HOUSTON POLICE DEPT'S. INTERNAL AFFAIRS INVESTIGATIVE REPORT FILE #44752-2013

PLAINTIFF DISPUTES THE DEFENDANT'S III. STATEMENT OF UNDISPUTED MATERIAL FACTS (PAGE 2 OF DEFENDANT'S MOTION)

ITEMS 1 THROUGH 4 OF PAGE 2 OF DEFENDANT'S MOTION, THE PLAINTIFF DISPUTES AS HE CONTENDS DEFENDANT FERDINAND FABRICATED THE EVENTS IN HER AFFIDAVIT AND PLAINTIFF OFFERS EVIDENCE IN SUPPORT OF HIS CLAIM:

IN DEFENDANT'S EXHIBIT 1 (FERDINAND'S AFFIDAVIT) SHE STATES ACCIDENT B (#00885051413B) PLAINTIFF'S EXHIBIT I PAGES 000214, 215, 216 TOOK PLACE ON ASHLAND ST. NEAR THE LOOP 610 AT SHEPHERD. HOWEVER, FERDINAND TELLS ACCIDENT INVESTIGATOR FEDDERSEN ACCIDENT B TAKES PLACE ON 1400 ALLSTON NEAR 300 W. ~~████~~ 11TH STREET - WHICH IS APPROX. FOUR MILES FROM ASHLAND ST. AND LOOP 610 AT SHEPHERD. FERDINAND STATES THIS "B" ACCIDENT IS A RESULT OF PLAINTIFF "SLAMMING ON HIS BRAKES CAUSING FERNAND TO REAR-END PLAINTIFF BREAKING HER HEADLIGHT." EVEN THOUGH FERDINAND MAKES NO MENTION OF THIS ACCIDENT TO H.P.D. DISPATCHER TO WHOM SHE IS SPEAKING WITH - SEE PLAINTIFF'S EXHIBIT I, PAGE - 000096. ALSO SEE FERDINAND'S "EMPLOYEE COMPLAINT HISTORY" - PLAINTIFF'S EXHIBIT I, PAGE - 000001.

THE PLAINTIFF CAN IMPEACH FERDINAND'S TESTIMONY, IN YET ANOTHER STATEMENT IN WHICH FERDINAND STATES "BOTH PARTIES SAID THEY WERE OKAY," WHEN ~~IF~~ FACT PLAINTIFF TOLD HER HIS BACK HURT AND ASHLIN JOHNSON ALSO CLAIMED AN INJURY - SEE PLAINTIFF'S EXHIBIT I PAGE - 000219.

PLAINTIFF DISPUTES ITEMS #5, #6 AND #7. UNDER RULES OF EVIDENCE ARTICLE IV - RELEVANCE AND ITS LIMITS AND PLAINTIFF OBJECTS TO THE DEFENDANT'S EVIDENCE OF THE "D.W.I. VIDEO" AND "ORAL DEPOSITION PAGE 12" AS IT HAS NO RELEVANCE IN DISPROVING PLAINTIFF'S CLAIM AGAINST THE DEFENDANTS AND ONLY SERVES TO PREJUDICE PLAINTIFF; AND SPECIFICALLY UNDER RULE 404(b)(1) CRIMES, WRONGS, OR OTHER ACTS WHICH MAKES THIS EVIDENCE INADMISSABLE.

ITEM #8: FOR THE REASONS STATED ABOVE AND THE FACT PLAINTIFF HAS NEVER BEEN CONVICTED OF "D. U. I." AS STATED.

ITEM #9: PLAINTIFF DISPUTES THAT HE EVER COMPLAINED OF "GENERAL BODY PAIN" BUT STATES DR. CHIDI FALSIFIED THE MEDICAL RECORD TO DISAVOW ANY KNOWLEDGE AS PLAINTIFF SPECIFICALLY TOLD DR. CHIDI "I CANT FEEL MY LEGS." PLAINTIFF DENIES THAT HE SAID "NO" WHEN ASKED IF HE HAD ANY INJURIES.

PLAINTIFF DENIES HE WAS "MONITORED BY DR. CHIDI FOR TWO DAYS." DEFENDANT'S STATEMENT THAT PLAINTIFF DID NOT SUFFER A BROKEN BACK IS UNTRUE - SEE DR. STEPHEN KAMINSKY - H.C.S.O. REPORT OF PLAINTIFF'S BACK WHICH DOES STATE PLAINTIFF SUFFERED A FRACTURE - PLAINTIFF'S EXHIBIT I, PAGE -000324.

PLAINTIFF OFFERS MORE EVIDENCE TO IMPEACH DR. CHIDI'S

TESTIMONY NAMELY, JAIL VIDEO FOOTAGE (PLAINTIFF'S EXHIBIT I, PAGES # - 000098, -000099 AND -000100)

IN DR. CHIDI'S "DECLARATION" DEFENDANT'S EXHIBIT 2, PAGE # 2 ITEM #6. PLAINTIFF DISPUTES DR. CHIDI EXAMINED HIM AT 3:15 AM. DR. CHIDI REFUSES TO EXAMINE PLAINTIFF BECAUSE THE RESTRAINT CHAIR WONT FIT THROUGH DOORWAY AND PLAINTIFF CANT "WALK INTO IT." (-000098).

(-000098) SGT. BONABY'S COMMENT ONLY STATES, "PLAINTIFF WAITING TO SEE MEDICAL," which is purposefully misleading.

PAGE 3, ITEM #9 OF DR. CHIDI'S DECLARATION HE STATES...

"I ONLY SAW MR ROBERTS ON THIS ONE OCCASION." (AT 3:15AM)

JAIL VIDEO FOOTAGE PAGE -000099, CD #2 OF 3, CAMERA #13, FRAME #17, SHOWS PLAINTIFF'S SECOND VISIT WITH DEFENDANT CHIDI AT 4:07P

WHEN DR. CHIDI TELLS PLAINTIFF "HE CAN BOND OUT AND GO TO THE E.R. HIMSELF, OR WAIT UNTILL HE IS TRANSFERED TO THE COUNTY " FOR TREATMENT.

PAGE 3, ITEM #10 DR. CHIDI DECLARES "HE APPEARED INTOXICATED." PLAINTIFF DISPUTES DR. CHIDI'S CLAIM WITH DEFENDANT'S OWN EXHIBIT #5, PAGE #3, ITEM #3, WHICH CONTRADICTS DR. CHIDI'S CLAIM OF INTOXICATION.

PLAINTIFF DISPUTES ALL DR. CHIDI'S CLAIMS IN HIS DECLARATION AND HAS PROVIDED PROOF OF HIS UNTRUTHFULNESS, THEREFORE HIS TESTIMONY SHOULD BE IMPEACHED.

IN AS MUCH AS PLAINTIFF HAS SHOWN THIS HONORABLE COURT THAT THERE IS A GENUINE DISPUTE OF MATERIAL FACTS IN THIS CASE THAT A JURY SHOULD DECIDE, PLAINTIFF PRAYS THIS COURT DENY DEFENDANT'S MOTION FOR SUMMARY JUDGMENT; AND IN FACT IN LIGHT OF THE OVERWHELMING EVIDENCE IN PLAINTIFF'S FAVOR, GRANT HIM A COUNTER-CLAIM OF SUMMARY JUDGMENT IN BEHALF OF PLAINTIFF.

Exhibit 1

HOUSTON POLICE DEPARTMENT

EMPLOYEE COMPLAINT HISTORY

Criteria Fields: AEL Command AEL Division Target Emp. ID = 121504

Report Date & Time 01/07/2014 3:05:31PM

Employee Name: MCCLAIN-FERDINAND, CHARAN

Employee Number: [REDACTED]

Date of Birth: [REDACTED]

Race: [REDACTED]

Sex: [REDACTED]

Division: NORTHEAST

Job Description: POLICE OFFICER

Command: NORTH PAT CMD

ISSUE ID YR	ALLEGATION	CLASS	REPORT DATE	COMPLAINANT'S NAME	INT/ EXT	DIVISION INVOLVED	DISPOSITION
15914 2002	CRIMINAL ACTIVITY	CLASS I	12/19/02	NORMAN, VELDA (1	POLICE TRAINEES	NOT SUSTAINED
15914 2002	CRIMINAL ACTIVITY-2	CLASS I	12/19/02	NORMAN, VELDA (1	POLICE TRAINEES	UNFOUNDED
34895 2009	IMPROPER POLICE PROCEDURE	CLASS II(D)	08/11/09	ADMIN PROCEDURE	1	NORTHEAST	SUSTAINED
34895 2009	MISCONDUCT	CLASS II(D)	08/11/09	ADMIN PROCEDURE	1	NORTHEAST	SUSTAINED
37648 2010	FAIL TO REPORT TO DUTY	CLASS II(D)	09/20/10	ADMIN PROCEDURE	1	NORTHEAST	SUSTAINED
40140 2011	IMPROPER POLICE PROCEDURE	CLASS II(D)	11/01/11	ADMIN PROCEDURE	1	NORTHEAST	SUSTAINED
40970 2012	CONDUCT & BEHAVIOR	CLASS II(D) BY	02/27/12	MCGOWEN, JOHN F	1	NORTHEAST	SUSTAINED
40970 2012	CRIMINAL ACTIVITY	CLASS II(D) BY	02/27/12	MCGOWEN, JOHN F	1	NORTHEAST	NOT SUSTAINED

TOTAL: 8

NOTE: VERIFY YEAR 2000 ISSUES WITH MAPPER - HPDTRACK

Tuesday, January 07, 2014 3:05:31PM

Page 1 of 1

ROBERTS_COH_000001

6 of 69